

Jul 17, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABEL MENDOZA, JR.,

Defendant.

NO. 2:03-CR-0243-LRS-1

**ORDER GRANTING MOTION  
FOR IMPOSITION OF A  
REDUCED SENTENCE**

**BEFORE THE COURT** is Defendant's Motion For Imposition Of A Reduced Sentence Pursuant To Section 404 Of The First Step Act (ECF No. 75). This motion is heard without oral argument.

Pursuant to a Plea Agreement filed November 12, 2009 (ECF No. 43), Defendant pled guilty to Count 4 of the Indictment charging him with Distribution of 5 Grams or More of Cocaine Base in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(iii). Because the United States filed a notice of enhanced penalty pursuant to 21 U.S.C. § 851 (ECF No. 38), the offense carried a statutory minimum term of imprisonment of 10 years (120 months) and a statutory minimum term of supervised release of 8 years.<sup>1</sup> On March 18, 2010,

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<sup>1</sup>But for Defendant's prior felony drug conviction, he would have been subject to a five year mandatory minimum term of imprisonment and a four year

1 in accordance with the joint recommendation of the Government and Defendant  
2 contained in the Plea Agreement, this court sentenced Defendant to 120 months  
3 imprisonment and 8 years supervised release. (ECF No. 59). Defendant's  
4 current release date is January 3, 2023 per the Federal Bureau of Prisons inmate  
5 locator website. <https://www.bop.gov/inmateloc/>

6 Defendant's conviction and sentence preceded the Fair Sentencing Act of  
7 2010 which became effective on August 3, 2010. Section 404 of the First Step  
8 Act of 2018 makes retroactive Sections 2 and 3 of the Fair Sentencing Act to  
9 those sentenced before the effective date of the Fair Sentencing Act. Section 2  
10 of the Fair Sentencing Act increased the drug amounts triggering mandatory  
11 minimums for crack (cocaine base) trafficking offenses from 5 grams to 28  
12 grams with respect to the 5-year minimum, and from 50 grams to 280 grams  
13 with respect to the 10-year minimum. Section 3 of the Fair Sentencing Act  
14 eliminated the 5-year mandatory minimum sentence for simple possession of  
15 crack cocaine. *Dorsey v. United States*, 567 U.S. 260, 269, 132 S.Ct. 2321  
(2012).

16 Per the Presentence Investigation Report (PSIR) filed in this matter,  
17 Defendant was responsible for 3.3 grams of cocaine and 23.4 grams of cocaine  
18 base. (ECF No. 58 at Paragraph 69). Even if the 3.3 grams of cocaine are  
19 included, the total amount of drugs is less than 28 grams and as such, the  
20 Defendant is no longer subject to the 10 year mandatory minimum term of  
21 imprisonment provided for in 21 U.S.C. § 841(b)(1)(B)(iii). Instead, as a result  
22 of the retroactive application of the Fair Sentencing Act, Defendant is no longer  
23 subject to any mandatory minimum, but rather to a statutory maximum term of  
24 imprisonment of 30 years and a minimum term of 6 years supervised release as

25 \_\_\_\_\_  
26 minimum term of supervised release.

27 **ORDER GRANTING MOTION**  
28 **FOR SENTENCE REDUCTION- 2**

1 provided for in 21 U.S.C. § 841(b)(1)(C).

2 Because Defendant is eligible for relief under the Fair Sentencing Act, it  
3 is necessary to recalculate his Base Offense Level under the Sentencing  
4 Guidelines. Since two different controlled substances are at issue, the drug  
5 conversion tables must be used to come up with a Converted Drug Weight  
6 amount in order to ascertain Defendant's Base Offense Level. Application Note  
7 8(B) to U.S.S.G. § 2D1.1. 3.3 grams of cocaine converts to 660 grams of  
8 Converted Drug Weight (1 gram of cocaine equals 200 grams of Converted  
9 Drug Weight) and 23.4 grams of cocaine base converts to 83,561.4 grams of  
10 Converted Drug Weight for a total of 84,221.4 grams or 84.2214 kilograms.  
11 Application Note 8(D) to U.S.S.G. § 2D1.1. This amount results in a Base  
12 Offense Level of 22 (at least 80KG but less than 100KG of Converted Drug  
13 Weight). U.S.S.G. § 2D1.1(c)(9). With a three level reduction for acceptance  
14 of responsibility, Defendant's Total Offense Level is 19. Based on a Criminal  
15 History Category of II, the advisory guidelines range is 33-41 months.

16 Relief under the First Step Act is discretionary. The Act at §404(c)  
17 provides that "[n]othing in this section shall be construed to require a court to  
18 reduce any sentence pursuant to this section." While the Government concedes  
19 Defendant's eligibility for relief, it contends the court should exercise its  
20 discretion to deny relief due to Defendant's criminal history in drug trafficking  
21 dating back to 1994, it "appear[ing] that the Defendant had a central role in [a]  
22 larger drug trafficking organization," and Defendant's disciplinary record while  
23 incarcerated which includes an attempted escape in November 2010, possession  
24 of an unauthorized item and possession of gambling paraphernalia in November  
25 2017, and disruptive conduct (e-mail abuse) in December 2018.

26 Defendant's criminal history and his drug trafficking role was fully  
27 considered by the court when it sentenced him in March 2010. The Defendant

28 **ORDER GRANTING MOTION  
FOR SENTENCE REDUCTION- 3**

1 has not been a model inmate, but it is noted that the most severe of his  
2 disciplinary offenses occurred almost nine years ago, and there was a seven year  
3 gap between that offense and the less serious offenses for which he was  
4 sanctioned in November 2017. The court is compelled to give less weight to  
5 Defendant's disciplinary record considering the length of time he has been in  
6 federal custody and the fact that were he sentenced today, he would be subject  
7 to a high-end guideline sentence of 41 months, 79 months less than the 120  
8 months mandatory minimum the court imposed in 2010.

9 The court will reduce Defendant's term of imprisonment to "time served,"  
10 but it will maintain the supervised release term of eight years. Eight years of  
11 supervised release remains warranted in light of Defendant's prison disciplinary  
12 record. After the expiration of one year of supervised release, the Defendant  
13 can move the court to consider early termination of supervised release pursuant  
14 to 18 U.S.C. §3583(e)(1).

15 Defendant's Motion For Imposition Of A Reduced Sentence Pursuant To  
16 Section 404 Of The First Step Act (ECF No. 75) is **GRANTED**. Defendant's  
17 sentence is reduced to "time served" to be followed by an eight (8) year term of  
18 supervised release. Defendant shall be released from federal custody forthwith.  
19 Defendant's *pro se* "Motion For Application Of The First Step Act Of 2018"  
(ECF No. 73) is **DISMISSED** as moot.

20 **IT IS SO ORDERED.** The court will enter Form AO247 consistent with  
21 this order. Copies of Form AO247 and this order will be provided to counsel of  
22 record, the U.S. Probation Office, and the U.S. Bureau of Prisons.

23 **DATED** this 17th day of July, 2019.

24 *s/Lonny R. Suko*

25 \_\_\_\_\_  
26 LONNY R. SUKO  
Senior United States District Judge

27 **ORDER GRANTING MOTION**  
28 **FOR SENTENCE REDUCTION- 4**